

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

DARRYLE EDWARD ROBERTSON

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Criminal No. JFM-01-0304

Civil No. JFM-09-775

MEMORANDUM

Darryle Robertson has brought this action under 28 U.S.C. §2255 claiming that his counsel was ineffective in not pursuing a direct appeal and challenging his sentence on the ground that it violated *United States v. Booker*, 543 U.S. 220 (2005).

Robertson's claim is frivolous and will be summarily denied. Robertson was sentenced to 360 months imprisonment pursuant to a plea agreement he entered under Fed. R. Crim. P. 11(c)(1)(C). In the plea agreement he waived his right to appeal. Nevertheless, the Fourth Circuit ruled in a prior Section 2255 action filed by Robertson that he was entitled to pursue a claim that he directed his counsel to note an appeal. Without reaching the question whether Robertson had advised his prior counsel to note an appeal, this court reinstated Robertson's right of appeal. On the appeal his conviction and sentence were affirmed.

Specifically, the Fourth Circuit ruled on the appeal that Robertson's plea was voluntary and that his 30 year sentence did not violate the rule established by *Apprendi v. United States*, 530 U.S. 466 (2000). *United States v. Robertson*, 2007 W.L. 4102749 (4th Cir. 2007). No claim under *United States v. Booker*, 543 U.S. 220 (2005), appears to have been raised on appeal but such a claim clearly would have been availing in light of the fact that Robertson had voluntarily agreed to facts that warranted the sentence to which Robertson voluntarily agreed in the plea

agreement.

A separate order denying Robertson's motion is being entered herewith.

January 19, 2010
Date

/s/
J. Frederick Motz
United States District Judge